THE AMERICAN PHILOSOPHY OF GOVERNMENT AND ITS APPLICATION TO THE ANNEXED COUNTRIES

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From the time of the founding of the United States by the Declaration of Independence until the Civil War, the existence of slavery obscured our philosophy of government as set forth in that great document, and as implied in the Constitution and its original amendments. The Civil War abolished slavery and restored our original philosophy. The adoption of the fourteenth amendment, placing upon the United States the responsibility for securing the fundamental rights of the individual, even against state action, was the logical effect of the restored philosophy. The annexation of distant regions, as the result of the Spanish War, and the necessity of applying to them our philosophy and system in some appropriate and permanent manner, compelled us again to consider our fundamental ideas, and again to declare our fundamental principles.

As a result from these epochal events in our history, our philosophy has been defined and reduced to its essential elements. It may, as it seems, be summed up in two propositions. The first is, that there are certain fundamental rights of each individual against all other individuals under a supreme law which we recognize—rights which are so fundamental that they are universal and unalienable and therefore beyond the just power of any government or of all the people of the nation or of the world to abolish or diminish; and that therefore there are certain fundamental and unalienable rights of each individual against governments, which we believe can best be made effective by constitutional prohibitions forbidding certain kinds of governmental action found by experience to be destructive of or dangerous to these fundamental rights, contained in written constitutions and made the most fundamental part of the supreme law of the land. The second proposition is, that all organized communities, however great or small, and whether independent or not, are corporations having for their object the securing of these fundamental rights; and that hence, like other corporations, they are democratic, representative and federal in form and have written constitutions.

The conception of fundamental and unalienable rights of the individual under a supreme law which is recognized by all persons and all governments is not new. Every one must recognize that there is a great difference in importance between the various rights which an individual enjoys in the society of others. Some are so important that all would agree that they are essential to life and to the existence of orderly society. At the other pole are rights which are trivial and unimportant. This difference has always been perceived. The Ten Commandments were fundamental law for the people of Israel; being regarded by them as a "covenant" made by God with man, the performance of which by man was essential to individual liberty and peaceful society. The people of Israel considered that they had fundamental rights and duties under the Ten Commandments, which no government could justly take away. All governmental action, so long as the Ten Commandments remained the fundamental law, was regarded as "judgment," since all questions of government had to be tested by the Commandments; and rulers were properly called "judges." So also the two "Great Commandments of the Law" laid down by Jesus as even more fundamental than the Ten Commandments of Moses, are principles of fundamental and universal law, under which Christians consider that each person has fundamental rights which are essential to individual liberty and to peaceful society, and which no government can take away.

In modern times we state the fundamental rights of the individual affirmatively, according to the Christian method, and hold that there is a supreme fundamental and universal law under which each individual has the fundamental and unalienable right, as against all other individuals, to do anything which may enable him, in harmonious relationship and coöperation with all others, to utilize the physical and psychical resources of the universe for his highest development as a natural and spiritual being, to the extent that this is possible having due regard to the equal rights of all others to utilize these same resources for these same purposes. The purpose of government is to secure the individual in the enjoyment of these rights. This power and duty of government to secure fundamental rights implies that it is the power and duty of government to extend the self-developing powers of the individual over the forces of nature by providing and maintaining the means and processes necessary for common use in the general self-developing activities, and that it is also the power and duty of government to release the self-developing powers of the individual from improper obstruction by restraining and punishing individuals who infringe these rights of other individuals.

The philosophic basis of this supreme fundamental and universal law under which exist certain fundamental rights of the individual which are universal and unalienable, is stated in the Declaration of Independence to be the proposition, held as a self-evident truth, that all men are created equal. From this proposition the Declaration asserts that it follows as a self-evident truth that all men are endowed by their Creator with certain unalienable rights, among which are the rights of life, liberty and the pursuit of happiness. This is of course the religious explanation; for both these propositions imply belief in a personal God and Creator before whom all men are equal. It is God, the Creator, according to this explanation, who has established the supreme universal law which all men can and must recognize under penalty of reversion to barbarism. Under this law all men, according to the Declaration, have certain fundamental rights, called the rights of life, liberty and the pursuit of happiness. These rights are common to all men—that is, universal—and also unalienable—that is, such that no one can part with them by his own act, even to a government; and such that they can not be taken from any one, even by a government, but can only be forfeited to society for anti-human and anti-social acts done, and through appropriate action of government regulating the forfeiture. These rights are said to arise by endowment of the Creator; the evident meaning being that they are rights corresponding to the attributes with which all men are equally endowed under a supreme and divine law. These attributes are of course life, motion and the ability to use things and natural forces for the support of life, for locomotion, and for the pursuit of happiness. From the right to the pursuit of happiness is evidently derived the right to the exclusive possession of things and natural forces which we call the right of property; but in the view of the Declaration, the right of property is limited by the common right of all to the pursuit of happiness. This religious basis for these universal and unalienable rights is doubtless the true basis. Lincoln so believed, as his Gettysburg address shows; for in that he declared that the whole American philosophy and system is based on the proposition that all men are created equal. It must, however, be recognized that this religious explanation is likely to be accepted only among that part of mankind which believes in God according to the revelation of Him made in the Christian Bible.

Another basis for these fundamental rights is that which we obtain by means of philosophy—that is, by the application of reason to facts of experience. In this view these fundamental and unalienable rights

are created by natural law, or the law of nature, and are called natural rights, because they are such rights as correspond to the common and universal human attributes of life, motion, and the ability to use things and natural forces for the support of life, for locomotion and for the pursuit of happiness—the right of exclusive use by each person of some part of the whole mass of things and some part of the natural forces, which we call the right of property, being to some extent natural and to some extent artificial. The existence of these natural rights is rationally and practically justified on the ground that they are necessary to individual liberty and peaceful organized society.

Still another basis for these fundamental and unalienable rights is that which we gain from the science of practical politics and jurisprudence. According to these sciences, all law emanates from an organized society and is the formulated expression of the conscience and will of the society, which the society enforces upon its members. Universal rights can, in this view, arise only from a law which is made by the organized society composed of all the peoples and organized communities of the world, and which is supreme even over the so-called independent nations for common and general purposes, so that its formulations of universal principles bind all nations and peoples. To this great organized society we apply the name of "the society of nations." In this view, the fundamental rights may be said to exist under the law of the society of nations, or under "the law of nations," as it is sometimes called. The law of nations, on this hypothesis, makes these rights unalienable by any individual on the ground that they must be so unalienable throughout the whole world in order that individual liberty and peaceful organized society may everywhere exist.

But whether we regard the notion that there is a supreme universal law creating certain fundamental and unalienable rights of the individual, as a religious proposition derived from our faith in a personal God and Creator of all men, or as a philosophical proposition derived from reason and experience, or as a legal proposition derived from the conception of the peoples and nations of the world as a single organized society and the formulator and legislator of a supreme universal law which binds all nations to the observance of these rights as unalienable, the result is the same, and the fundamental and unalienable rights are a fact.

As there are therefore undoubtedly fundamental and unalienable rights of the individual against all other individuals under a supreme universal law, it follows that the object of government must be the

securing of these fundamental and unalienable rights, and that therefore the individual has certain fundamental and unalienable rights against the government to prevent and restrain it from destroying or diminishing these rights.

The doctrine that there are fundamental rights of the individual against the government was declared in the Declaration of Independence. The words following the statement of the doctrine that all men are created equal and therefore have certain unalienable rights, are: "To secure these [fundamental and unalienable] rights, governments are instituted among men, deriving their just powers from the consent of the governed." To "secure" these rights is to recognize and protect them. The statement negates the idea that the government creates these rights. It necessarily implies that these rights are created by a law supreme over governments and peoples, which governments and peoples recognize. The securing of these fundamental rights is thus declared to be the object for which all governments are instituted. All governments can do is to create artificial or remedial rights, for the purpose of securing fundamental rights. The protective action of governments in maintaining armies, navies, fortifications, courts and police, the dispositive action of governments in admitting states, in laying out administrative districts and in chartering towns, cities and private corporations, the sociative action of governments in maintaining good relations with foreign nations and with annexed countries, the constructive action of governments in building ways of communication, in providing public utilities, in entering in various ways into coöperative business operations with moneys collected by taxation, as well as the permissive and prohibitive action of governments in regulating the action of private persons, public officials, and corporations, all have for their object the creation of artificial or remedial rights whereby the fundamental and unalienable rights may be secured. In all the vast work of government there is thus involved an act of judgment concerning whether the act ordered to be done by public officials or the things ordered to be constructed at public expense, will be in aid and protection of the fundamental rights of the individuals affected, and whether the act prohibited or conditionally permitted to individuals is one which it is necessary to prohibit or conditionally permit, in order to secure fundamental rights.

The Declaration, in asserting merely that governments are instituted among men, implies that governments may in some cases rightfully be instituted for a people by internal force or by the external power of another people. In declaring, however, that all governments, in what-

ever manner they may be instituted, have for their object the securing of the fundamental and unalienable rights of the individual, and that they derive their "just" powers—that is, their power to secure these fundamental and unalienable rights—from the consent of the governed, it is necessarily implied all governments, however instituted, are the agents of the governed, and that whenever the governed have attained the capacity of consenting to the exercise of such just powers, they have the right to institute their own government. When the people governed institute their own government, however, it follows from the Declaration that it is their duty to recognize the fundamental and unalienable rights of the individual not only against other individuals, but also against the government itself, and to make these rights effective.

The Declaration of Independence is silent as to the manner in which the fundamental and unalienable rights of the individual against the government to restrain it from destroying or diminishing his fundamental rights are to be made effective. This problem had, however, been partly solved at the time the Declaration was made. The solution was, for the people to impose such constitutional prohibitions upon the governments as were found needful for the purpose of securing these rights. The practice of imposing such constitutional prohibitions or governments arose among the people of England. The belief in the necessity of such constitutional prohibitions was held with peculiar tenacity by those who emigrated from the British Islands to the American colonies prior to the Revolution. The American colonists were Englishmen, Scotchmen, Irishmen and Welshmen of the most progressive and liberty-loving type, with an infusion of persons of the same type from the nations of Europe, who insisted that every expedient found useful at home for the maintenance of individual liberty and peaceful society should be transplanted to their new home and made effective there.

From early times it had been the practice of the English people, when they perceived that a certain kind of governmental action had a tendency to destroy or diminish fundamental rights, to compel the government to concede to them that it would not act in that manner. Having obtained such a concession, they made it a part of the fundamental and supreme law of the land, binding on the government itself. When they perceived that a particular kind of governmental action had a tendency to destroy fundamental rights unless taken in a certain manner or by a certain process, they compelled their government to concede that all this kind of action of government except that taken in the conditional manner, should be prohibited; and they made this conditional prohibition a

part of the fundamental and supreme law of the land. Thus, through the dealings between the people of England and their governments and through the dealings of the people of the American colonies with their governments, there had been evolved and formulated, at the time of the American Revolution, a number of constitutional prohibitions, some absolute and some conditional, all designed to secure fundamental rights. The instruments in which these constitutional prohibitions were formulated were Magna Charta, the English Bill of Rights, the Massachusetts Body of Liberties, the English Habeas Corpus Act, the English Declaration of Rights and the Virginia Declaration of Rights. These constitutional prohibitions, however, at the time the United States came into existence, had not been made effective as the supreme written law of the land, but were only mandates from the people to the legislature and executive which were enforced, so far as they were enforced at all, by political or revolutionary action of the people.

When the American Colonies, as States, immediately before and after the Declaration of Independence, established written constitutions, they inserted in them, with a greater or less degree of completeness, the constitutional prohibitions against governmental action, as then formulated by the English-speaking peoples. When the Constitution of the United States was formed and the general government of the Union thus given full powers for the general purposes, no constitutional prohibitions against the general government were at first inserted; but by the insistence of the States, nine amendments were almost immediately adopted, containing all the constitutional prohibitions against action by the general government theretofore formulated in England and the Colonies for the protection of fundamental rights. The Constitution imposed on the States some constitutional prohibitions, but left it doubtful whether the general government had superintending and correcting power over the States for the purpose of making these prohibitions effective. The fourteenth amendment imposed further prohibitions on state action and gave the general government the needful superintending and correcting powers.[1]

The Supreme Court of the United States has used language, in speaking of the fundamental rights of the individual, which shows that, in the opinion of the court, there are, according to our philosophy, fundamental rights of the individual under a law which is supreme even over the Constitution, and that the Constitution recognizes and guarantees

[1] Civil Rights Cases, 109 U. S. 1, 23.

these rights. It has spoken of "certain fundamental rights, recognized and declared, but not granted or created, in some of the amendments to the Constitution" and which "are thereby guaranteed . . . . against violation or abridgment by the United States, or by the States, as the case may be."[2]

The Supreme Court also, in the Insular Cases recognized that some of the prohibitions in the Constitution relate to "natural rights." Its words were:[3]

We suggest, without intending to decide, that there may be a distinction between certain natural rights, enforced in the Constitution by prohibitions against interference with them, and what may be termed artificial or remedial rights, which are peculiar to our own system of jurisprudence. Of the former class are the rights to one's own religious opinions and to a public expression of them, or, as sometimes said, to worship God according to the dictates of one's own conscience; the right to personal liberty and individual property; to freedom of speech and of the press; to free access to courts of justice, to due process of law, to an equal protection of the laws; to immunities from unreasonable searches and seizures, as well as cruel and unusual punishments; and to such other immunities as are indispensable to a free government. Of the latter class are the rights to citizenship, to suffrage . . . . and to the particular methods of procedure pointed out in the Constitution, which are peculiar to Anglo-Saxon jurisprudence.

These "natural rights" have since been fully recognized by the Supreme Court, and to them the name "fundamental rights" has been definitively applied.[4]

The Supreme Court has also distinguished between those constitutional prohibitions of governmental action which are for the purpose of securing the fundamental rights of the individual, and the constitutional limitations which arise out of qualified grants of power. In practice, the former are treated as fundamental, and hence all other provisions of our constitutions are interpreted so as not to conflict with them, and all governmental action inconsistent with them is nullified. The Supreme Court has said of the prohibitions imposed on the United States by the Constitution which concern fundamental rights, that they "go to the very root of the power of congress to act at all, irrespective

[2] Logan vs. The United States, 144 U. S., 263, 293.

[3] Downes vs. Bidwell, 182 U. S., 244, 282.

[4] Hawaii vs. Mankichi, 190 U. S. 197, 217, 218; Dorr vs. United States, 195 U. S. 138, 144, 148.

of time or place."[5] The same idea was expressed more fully in the same case as follows:[6]

There are general prohibitions in the Constitution in favor of the liberty and property of the citizen, which are not mere regulations as to the form and manner in which a conceded power may be exercised, but which are an absolute denial of all authority under any circumstances or conditions to do particular acts. In the nature of things, limitations of this character cannot be under any circumstances transcended, because of the complete absence of power.

In the above quotations from the decisions of the Supreme Court, only the constitutional prohibitions imposed on the government of the United States are considered. As, however, all American state constitutions impose substantially the same constitutional prohibitions upon state governments, the same line of reasoning applies to these. Moreover, the fourteenth amendment places upon the United States government the responsibility for seeing to it that the States observe the most fundamental of these constitutional prohibitions.

The proposition which was above advanced as the first basic proposition of the American philosophy—that there are certain fundamental and unalienable rights of the individual against all other individuals and hence certain fundamental and unalienable rights of the individual against the government, which can be most effectively secured by constitutional prohibitions against certain forms of governmental action contained in written constitutions and made the most fundamental part of the supreme law of the land—would therefore seem to have been established.

The proposition advanced as the second basic proposition of the American philosophy—that all organized communities are corporations—doubtless requires no such elaboration as the first.

We have seen that from this first proposition it follows that governments are agents of the governed for a definite purpose—the securing of the fundamental and unalienable rights. The people governed are the principals, whether they institute their government or not; and when they attain the capacity of securing these rights, they may rightfully institute their own governments, and become the responsible principals in fact. Thus we have a collective body of principals and a collective group of agents organically and permanently united under a

[5] Downes vs. Bidwell, 182 U. S. 244, 277.
[6] Downes vs. Bidwell, 182 U. S. 244, 294, 295.

common name. When the idea of a corporation is reduced to its essence, this is exactly what a corporation is. The governed and the government in such case form an artificial personality and we call this artificial personality a corporation. All corporations require for the carrying out of the agency a written constitution, which is the supreme internal law of the corporation and also an instrument of recognition of the supreme external law under which the corporation exists. Every written constitution is also a power of attorney from the members of the corporation, as principals, to the governing board, as agents, which declares and defines the objects of the corporation, and makes a distribution of powers and functions among the various parts and branches of the governing agency.

It is because we believe that all organized communities are corporations that we provide written constitutions for all organized communities under the American system. In independent organized communities, called States, the people make the constitution through a specially created constitution-making body of representatives. For municipal corporations, the constitution or charter is enacted by the legislature of the State, though usually the legislature merely registers the charter prepared by the people of the municipality. The constitution of a State is made the supreme law of the land, and contains constitutional prohibitions addressed by the people to all branches of the government, forbidding the kinds of governmental action deemed destructive of or dangerous to the fundamental rights of the individual. These prohibitions equally apply to all the municipal and other corporations of the State, since these exist in subordination to the State. In all constitutions of States, the functions of government are distributed among the parts of the governing agency (and in the case of federal States between the member States and the Union), so as to establish proper checks and balances between the parts and members, and enable them all to work together harmoniously in the accomplishment of the object of the corporation.

The corporate form of action is necessarily democratic, since all the members assembled have the ultimate control. It is necessarily representative, especially as respects legislative action, since all the members cannot take the time to meet and deliberate concerning the by-laws of the corporation, and must therefore elect delegates to represent them for this purpose. When corporate transactions are widely extended, the tendency is for corporations to form themselves into a greater corporation which is given jurisdiction for the general purposes. Thus the

corporate form of action necessarily results in corporations organized on federal principles.

The corporate form of organization requires that there should be some superintending agency within every corporation or external to it, to prevent the corporation from violating the object for which it was created, and to prevent particular governmental agents from going beyond the functions assigned to them. In corporations for social or industrial purposes, when the internal superintending agency proves inadequate, the courts are made external superintending agents for this purpose. Under the American system, the courts exercise this superintending function also for all organized communities, and thus the courts of the States and the United States exercise this function under the various constitutions. As, however, the object of all our governments is to secure the fundamental and unalienable rights of the individual, the courts under our system, have the function, in cases arising under the prohibitions of our written constitutions concerning fundamental rights, of judging whether or not the action ordered, permitted or prohibited by the legislature or the executive is contrary to the constitutional prohibitions, and hence of judging whether or not it is an infringement of these fundamental rights. In this particular class of cases the courts, who are themselves only a part of the governing agency, cannot, of course, be allowed to have absolute finality, though in the vast majority of cases the decisions of courts of final jurisdiction, even in this class of cases, have been and doubtless always will be satisfactory to the people and will be accepted as final. In the exceptional cases, some method of revision must of course be provided, but the method adopted must be such as will be most likely to secure fundamental rights, and the most careful safeguards must be provided so that it shall be understood that the process of revision is solely for this purpose, and so that the revision shall really have this effect.

Our philosophy is thus a complete and logical whole. The doctrine that there are certain universal and unalienable rights of the individual under a supreme law which we recognize as the law of God, or as the law of nature, or the law of the society of nations, conforms to our belief in the moral worth and dignity of the individual. From the existence of these fundamental rights, it follows that the individual has correlative rights against the government, that all government is an agency to secure the fundamental rights, and that all organized communities are corporations. We therefore insist upon the corporate form of organization for all American States, with its democratic, representative and federal

institutions, with its written constitutions containing prohibitions against governmental action destructive of or dangerous to fundamental rights, and with its superintendence by the courts as tribunals bound to apply these constitutional prohibitions as fundamental and supreme law, subject to revision in cases involving fundamental rights by such a special tribunal or such special electoral process as the people of the state or nation may think best adapted to secure these rights. We regard the corporate form of organization as the only form which is logically consistent with our philosophy, and as the most suitable form by which to secure the supremacy of this higher law and the universal and unalienable rights of the individual under that law.

Having thus reached a conclusion concerning the general American philosophy of government, it remains to consider how we apply this philosophy in our relationships with the annexed countries.

If there are fundamental and unalienable rights of the individual, they are, as has been shown, universal. They are rights which equally belong to all men under a supreme universal law. The doctrine of fundamental rights and all that part of our philosophy on which we base our doctrine of fundamental rights, therefore, we are logically compelled to recognize as in force everywhere in the world exactly as in the United States. We hold that every person living has these fundamental rights, and that wherever they are not recognized and secured by government, the situation is abnormal and temporary. It is therefore our primary duty to all annexed countries to institute governments for them which will secure these rights. This we have actually done. In the instructions of President McKinley to the Philippine commission charged with taking over the civil government of the Philippines from the military authorities, it was said:

> There are certain great principles of government which have been made the basis of our governmental system, which we deem essential to the rule of law and the maintenance of individual freedom. . . . . There are also certain practical rules of government which we have found essential to the preservation of these great principles of liberty and law. . . . . These principles and these rules of government, must be established and maintained in [the] islands for the sake of the liberty and happiness [of the people of the islands], however much they may conflict with the customs or laws or procedure with which they are familiar. . . . . Upon every division and branch of the government of the Philippines, therefore, must be imposed these inviolable rules:

That no person shall be deprived of life, liberty or property without due process of law; that private property shall not be taken for public use without just compensation; that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence; that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted; that no person shall be put twice in jeopardy for the same offence, or be compelled in any criminal case to be a witness against himself; that the right to be secure against unreasonable searches or seizures shall not be violated; that neither slavery nor involuntary servitude shall exist except as a punishment for crime; that no bill of attainder or *ex post facto* law shall be passed; that no law shall be passed abridging the freedom of speech or of the press or the rights of the people to peaceably assemble and petition the government for a redress of grievances; that no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed.

The Supreme Court of the United States, in a case involving the fundamental rights of an individual in the Philippines, quoted these instructions, and commented on the statement of fundamental principles which they contain, as follows:[7]

These words are not strange to the American lawyer or student of constitutional history. They are the familiar language of the Bill of Rights, slightly altered in form, as found in the first nine amendments of the Constitution of the United States, with the omission of the provision preserving the right of trial by jury and the right of the people to bear arms, and adding the prohibition of the thirteenth amendment against slavery or involuntary servitude except as a punishment for crime, and that of art. 1, § 9 to the passage of bills of attainder and *ex post facto* laws. These principles . . . . were carefully collated from our own Constitution, and embody almost verbatim the safeguards of that instrument for the protection of life and liberty.

When Congress came to pass the act of July 1, 1902, [the Organic Act of the Philippines], it enacted, almost in the language of the President's instructions, the Bill of Rights of our Constitution. In view of the express declaration of the President, followed by the action of Congress, both adopting, with little alteration, the provisions of the Bill of Rights, there would seem to be no room for argument that in this form it was intended to carry to the Philippine Islands those principles

[7] Kepner vs. United States, 195 U. S. 100, 123, 124.

of our government which the President declared to be established as rules of law for the maintenance of individual freedom. . . . .

How can it be successfully maintained that these expressions of fundamental rights, which have been the subject of frequent adjudication in the courts of this country, and the maintenance of which has been ever deemed essential to our government, could be used by Congress in any other sense than that which has been placed upon them in construing the instrument from which they were taken.

It was undoubtedly the purpose of the President and Congress, in thus establishing in the Philippines these "great principles of government which have been made the basis of our governmental system, which we deem essential to the rule of law and the maintenance of individual freedom," and these "practical rules of government which we have found essential to the preservation of the great principles of liberty and law," to extend our philosophy of government and the fundamental principles of our Constitution to the Philippines, in case such extension was necessary. At that time it was uncertain whether it was necessary that such extension should be made by act of Congress, or by executive action authorized or ratified by Congress, or whether such extension occurred automatically and as a necessary result from our philosophy and the principles of the Constitution, by the mere fact of annexation. Since that time the Supreme Court has resolved that doubt, to the satisfaction of the people of the United States, of the annexed countries and of the civilized world in general, by holding that our philosophy of government and the essentials of our Constitution and our political system do extend of their own force to every annexed country at the moment of annexation and by the mere fact of annexation. This has been done by the court holding that all the prohibitions of the Constitution having for their purpose the securing of the fundamental rights of the individual, are in force in every annexed country from the moment of annexation.[8]

The specification of the constitutional prohibitions which secure fundamental rights, made in the President's instructions above quoted, ratified in the Organic Act of the Philippines, and held to be correct by the Supreme Court, with the approval of the people of the United States and of the annexed countries, has definitely determined the parts of our Constitution which form our Bill of Fundamental Rights and which extend to their own force to the annexed countries. There is, therefore,

[8] Hawaii vs. Mankichi, 190 U. S. 197, 217; Dorr vs. United States, 195 U. S. 138, 144, 148.

no occasion to insert a similar Bill of Fundamental Rights in existing Organic Acts by amendment or to embody such a Bill of Rights in Organic Acts hereafter enacted. Organic Acts expressly or impliedly extending the Constitution of the United States to annexed countries are, so far as the Bill of Fundamental Rights is concerned, merely declaratory of the existing situation. Even if an Organic Act of an annexed country makes no reference to the Constitution of the United States and contains no Bill of Rights, the annexed country has the benefit of the Bill of Fundamental Rights as collated in the President's instructions above quoted, which have been approved by the Supreme Court, as fully as if this were embodied in its own Organic Act; and, in legal effect, all annexed countries have had the benefit of these constitutional prohibitions from the instant of their annexation. Thus, as the logical result of our philosophy of government—or, as the lawyers say, of the underlying principles of the Constitution—the effect of annexation of a country by the United States is to make every person there residing who elects to come under the jurisdiction of the United States, a free man, equal in his fundamental rights with every citizen of the United States—an inheritor of the accumulated wisdom and experience of the centuries in safeguarding individual liberty and human society, and a participant in the work of evolving new safeguards for the same purpose.

Consistently with our general philosophy, also, we regard each of the annexed countries as a state and a corporation. We consider the inhabitants of each country as the members of the corporation and we regard the government, notwithstanding the fact that it may contain citizens of the United States appointed by the United States, as the governing agency of the annexed country for the purpose of securing the fundamental rights of the individual.

Those parts of the Constitution of the United States which distribute or recognize the distribution of the functions of government within the United States, according to our democratic, representative and federal forms are, as we recognize in the organic acts or constitutions enacted by Congress for the annexed countries and as the Supreme Court has decided, in force in the annexed countries to the extent that the people of the countries are fitted to act according to these forms. It is of course impossible reasonably to apply this part of our philosophy in any other manner.[9]

[9] Downes vs. Bidwell, 182 U. S. 244; 290–293; Dorr vs. United States 195 U. S. 138, 143–145.

After the Spanish War, before we fully realized what our philosophy involved, and while we were under pressure of the necessity of using some political terms to express our relationship with the annexed countries, certain political terms brought over from the usage of other nations having a philosophy of government different from ours, came into use to describe this relationship. In view of our philosophy as now established, it seems necessary to discard all the old terms and to substitute new ones, which will be consistent with our ideas and acceptable to the people of the annexed countries. The only two of the old terms which have survived with us are the words "dependencies" and "possessions." Both of these are feudal terms, based on the assumption that the monarch possessed his realm and its appurtenances and dependencies, as his property. The outlying regions beyond the borders of the realm—the dependencies—were under the practically absolute power of the feudal monarch. They were regarded almost in the light of his private property. The words "dependency" and "possession" cannot, it would seem, logically be used by us, in view of our philosophy as now determined, except as applied to small isolated and practically uninhabited places under our jurisdiction. "Empire" is the Roman *imperium*, the absolute power of the military commander. "Dominion" is the Roman *dominium*, the absolute power of the Roman land-owner over his land and all persons and things thereon. "Colony" is the Roman *colonia*, the body of *coloni*, or farmers, sent out with the military garrisons to the walled towns built to hold conquered and annexed lands and populations. "Territory" is the Roman *territorium*, a place held by terror—that is, the region adjacent to the walled town which the *coloni*, or farmers, cultivated under the protection of the military garrison, the incursions of the natives being prevented by the terror which the garrison inspired.

The word-root from which we may derive terms appropriate to express our ideas of the relationship between nations and their annexed countries, according to our philosophy as now established, seems to be the root of the Latin word *socius*. *Socii* were friends, allies and partners—persons who recognized each other as equals before the law as respects their fundamental rights, and who were working together in some operation of common benefit. In international politics, under the influence of humane notions, we are beginning to speak of the whole world as "the society of nations." The New England Confederation of 1643 described itself as a "consociation." The term "associate states" would seem to be appropriate to apply to annexed countries which on account of their distance from us, or for other reasons, we have

not incorporated into the United States. Those annexed countries which we have incorporated into the United States but not admitted as states into the Union, we might call "insociate states." The whole political organization composed of the United States and its associate and insociate States might be called "the American Sociation."

It is clear that it does not follow from the American philosophy that our annexed countries have the right of immediate or ultimate international independence. The Declaration based the rights of the United Colonies to international independence, first, on the fact that Great Britain had shown, by a long series of acts, that it denied the existence of fundamental rights in the practical sense in which the Americans believed in them, and, second, on the fact that the Colonies, as United States, were fitted to undertake the duties and responsibilities of an independent nation. Neither of these facts exists in the case of our annexed countries. We not only institute governments among them to secure to them these fundamental rights, but by means of written constitutions with which we provide them by our legislative action, we give them the benefit of those practical rules of government formulated in constitutional prohibitions forbidding certain kinds of governmental action which the experience of the civilized world has shown to be destructive of or dangerous to individual liberty and civilized society, thus making the security of fundamental rights effective. By these same constitutions we implant among them the rudiments of those democratic, representative and federal forms and institutions which are shown by experience and reason to be necessary in order that communities may themselves secure the fundamental rights of the individual and live in true liberty, and we take measures to develop these forms and institutions as rapidly as possible. We make the courts the guardian of these constitutions, and all provisions relating to fundamental rights receive the same interpretation in the annexed countries as at home. The situation as between the United States and its annexed countries as respects the securing of fundamental rights is therefore exactly the reverse of that which existed between Great Britain and the American Colonies in 1776. Moreover, none of the annexed countries is fitted to fulfil international responsibilities. The situation of these countries is therefore in this respect exactly the reverse of that of the United Colonies in 1776.

But though our philosophy does not lead to international independence of the annexed countries, it does follow from it that the annexed countries have the right, as they progress in the art of self-government and in appreciation of their duties to themselves and to the rest of the

world, to be progressively relieved from habitual control by the legislature of the nation and to have the powers of their local legislatures and the participation of their people in their own government progressively increased. Thus it follows that in lieu of the control by Congress, there should be substituted, in the case of each annexed country, by a gradual process proportioned to its progress in civilization, a diplomatic control of the relationships between the United States and the annexed country, in the interests of the American Sociation and the society of nations, under the habitual and ordinary charge of the chief executive of the nation; the annexed countries participating by representation in this diplomatic control, and the Congress intervening only in extraordinary cases, as a superintending, nullifying, correcting or registering body. This substitution of diplomatic for legislative control is what the American Colonies demanded from Great Britain. The substitution has actually been made as respects the relations between Great Britain and the self-governing annexed countries of Canada, Australia, New Zealand and South Africa. It is due to the dignity of self-governing annexed countries that such a substitution should be made.

When the inhabitants of the distant annexed countries become skilled in the art of self-government and familiar with our philosophy and our system, they will undoubtedly perceive the broad liberty they obtain while in association with us, and will realize that international independence might prove to be fictitious and might expose them to exploitation by local dictators and foreign intriguers. If we now recognize these countries as associate states and assure them, as soon as they become skilled in the art of self-government, an independence limited by a control on our part which will be essentially diplomatic and in which they themselves will participate, it is to be expected that they will voluntarily, though gradually, abandon all schemes for international independence and finally come to accept with satisfaction and appreciation a relationship of permanent connection and diplomatic association with the United States.